

Statement Regarding SB 138 – March 4, 2015
For House Committee on Appropriations
Submitted by Bruce A. Timmons

Legislative History of CVRF:

The Crime Victim's Rights Fund (CVRF) receives revenue from a unique constitutionally-authorized assessment against criminals convicted of crimes. This is how and why it began.

Then-Rep. William Van Regenmorter, an advocate for crime victims, authored the 1988 constitutional amendment that is now Art I, Sec. 24, to provide constitutional protections for crime victims' rights and to provide funding to reimburse counties for services provided to crime victims by prosecutors as mandated by the state – in recognition of **Headlee** constitutional constraints on mandating activities by local government without providing for their funding:

"(3) The legislature may provide for an assessment against convicted defendants to pay for crime victims' rights." (Emphasis added.)

He sponsored the original crime victim rights fund statute to prescribe use of the fund and to impose the constitutionally allowed assessment on those defendants whose cases were serious enough to invoke the crime victim rights statute (1985 PA 87) and certain specified (not all) misdemeanors – where either there was a victim or serious likelihood that a person who suffer physical injury or loss of property. It was neither necessary nor warranted to impose the assessment for all crimes.

When the District Court was created by 1968 PA 154, a \$3 judgment fee was imposed for all misdemeanors – before we were aware of a 1965 Court of Appeals decision in People v Barber that invalidated an attempt to surcharge fines in criminal cases to fund law enforcement training. By 1970, MCL 600.8381 was amended to replace the "judgment fee" with "minimum costs". It was out of the same concern that I recommended the inclusion of the assessment provision in Art I, §24, so it could withstand any similar challenge.

MCL 780.901(b) defines "crime victim's rights services" as "services required to implement fully the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, and services prescribed under this act." The "rights" provided under 1985 PA 87 directly impact victim's rights to be informed of the criminal process involving the case that affects them or a deceased victim – when proceedings occur, when a victim has the right to make an impact statement, and when a victim is entitled to notice (including release of a prisoner from jail or prison) – and to receive restitution.

A perceived surplus in the Crime Victim's Rights Fund led to recent "raids" upon it to balance the GF/GP budget – some of which could be questioned as an unconstitutional diversion from a constitutionally authorized assessment. Never mind, of course, that in 8 of 9 fiscal years from 2002-03 to 2010-11 more money was expended for crime victim's rights services than was collected from crime victim's rights assessments – and the surplus had nearly evaporated.

In 2008, MCL 780.904 was amended to allow a surplus in the crime victim's rights fund to be siphoned off for these 5 objectives for the fiscal year ending September 30, 2009:

(a) The operation and enhancement of the sex offender registry compiled and maintained under the sex offenders registration act, 1994 PA 295, MCL 28.721 to 28.736.

(b) The Amber alert program under the Michigan Amber alert act, 2002 PA 712, MCL 28.751 to 28.754.

(c) Treatment services for victims of conduct prohibited under sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g.

(d) Polygraph examination as that term is defined under section 2 of the polygraph protection act of 1981, 1982 PA 44, MCL 37.202.

(e) The expert witness testimony of a forensic scientist.

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The uses allowed under MCL 780.904(2)(a) to (e) – with the possible exception of subdivision (c) – were arguably law enforcement expenses, more related to prosecution of the offense than "victim services". (The Amber alert system may not involve a crime victim.)

Late in 2009, HB 5592 was introduced to balance the MSP budget for FY 2009-10 and to allow use of the surplus in the CVRF in any fiscal year. At the same time there were designs on the same surplus for a statewide trauma system. Prosecutors, who rely upon the CVRF for reimbursement for services they provide for victims, were concerned that the draw-down on the surplus would shortly mean the state would be unable to fund crime victim's rights services that the fund was created to do and thereby create yet one more unfunded mandate on counties. HB 5666 was passed in the Fall of 2010, 2010 PA 202, to again permit use of CVRF surplus for the five MSP programs noted above for FY 2009-10 (but not beyond).

Bowing to the medical lobby's clout, the Prosecuting Attorneys Association of Michigan (PAAM), in order to protect its funding for victim's services, then helped develop a package of 3 bills with these concurrent objectives – protecting its funding for crime victim's rights under 1985 PA 87, providing funding for the statewide trauma system, increasing compensation for victims under 1976 PA 223, and increasing the crime victim's rights assessments to cover the additional costs. Faced with concerns from advocates against domestic violence, a work group that included ~~DBA~~ PAAM, trauma centers, and advocates against domestic violence (MCADSV) reached a compromise that was incorporated into SB 1003. The full package was: SB 1003 allocated up to \$3.5 million annually for trauma centers, HB 5661 raised assessment on convicted criminals, and HB 5667 increased victim compensation. More specifically:

SB 1003 (H-1), 2010 PA 280, amended the section distributing the CVRF, MCL 780.904, to:

- Eliminate further diversion of the CVRF for the 5 MSP purposes.
- Allow indefinite funding, up to \$3.5 million annually, from the fund's surplus, if any, for the establishment and maintenance of a statewide trauma system (including staff support and related emergency medical services program activities) through FY 2013-14.
- Reduce the \$3.5 million by half after October 1, 2014, "unless the amount expended is reasonably proportional to crime victims' utilization of the statewide trauma system".

[Note that it was nowhere stated who would **determine that**.]

- Include an effective date of April 1, 2011.
- Be tiebarred to HBs 5661 and 5667.

HB 5661, 2010 PA 281, amended the section setting assessment amounts, MCL 780.905, to:

- Increase the crime victim's rights assessment for a felony from \$60 to **\$130**.
- Increase the crime victim's rights assessment for any misdemeanor to **\$75**. [Until then there was an assessment of \$50 for "a serious misdemeanor or a specified misdemeanor"; limited lists of misdemeanors once found in MCL 780.901(h) and MCL 780.811 via 780.901(g)..]
- Increase the crime victim's rights assessment for juvenile offenses from \$20 to **\$25**. [Juvenile offense previously was one that if committed by an adult would be a felony, serious misdemeanor, or a specified misdemeanor. Now it applies to felonies and *all* misdemeanors.]

HB 5667, 2010 PA 282, amended the crime victim's compensation act, MCL 18.361, to:

- Increase the ceiling on the aggregate award for victim's compensation from \$15,000 to **\$25,000**. [**Note**: The \$15,000 limit had been in effect since the original 1976 statute.]
- Revise the amounts allowed for funeral expenses from \$2,000 to \$5,000.
- Extend grief counseling to grandparents and grandchildren.
- Allow up to \$500 for cleaning up the crime scene (once permitted by the investigating law enforcement agency) if the crime scene is located at the residence of the victim or of a surviving spouse, parent, grandparent, child, sibling, or grandchild of a victim of a crime who died as a direct result of the crime.

Last Session – 2014 PA 252 (EHB 5313) and 2014 PA 299 (EHB 4915) As Enacted:

One of the key parts of the 2010 compromise was that the amount of funds available the statewide trauma system would be cut in half (to \$1.5 million) "**unless the amount expended is reasonably proportional to crime victims' utilization of the statewide trauma system**".

The sole rationale for use of CVRF money for this purpose is that trauma centers serve "crime victims". First, that rationale may not be justification for the use of a constitutionally dedicated restricted revenue fund. Second, after 4 years there was no data as to the utilization of the statewide trauma system for crime victims.

The October 1, 2014, date was a concession by critics in 2010 to allow funding for a statewide trauma system that was not dependent upon service to crime victims.

EHB 4915 extended by 4 years the date for reducing CVRF money for the trauma system regardless of whether the amount expended is reasonably proportional to crime victims' utilization of the statewide trauma system. It's an extended blank check without accountability.

EHB 5313, 2014 PA 252, Art IV (DCH Budget, FY 2014-15), Part 1, Sec. 120, was enacted to provide a one-time appropriation of \$1.3 million GF/GP for "Statewide trauma system" (the same phrase used in HB 4915). **Sec. 1904** of Art IV describes how that money is to be used:

Sec. 1904. From the funds appropriated in part 1 for the statewide trauma system, the department shall allocate funds to establish and operate statewide systems for trauma, stroke, ST segment elevation myocardial infarction, perinatal, and other time-dependent systems of care.

That objective is clearly a significantly broader agenda than treating crime victims – indeed, it underscores that use of the funding has very little, if anything, to do with care for crime victims. Is there now even a gossamer thread between Sec. 1904 and Art I, Sec. 24?

I can find only two provisions in the Michigan Constitution that deal directly with financial sanctions against a convicted criminal – Art VIII, Sec. 9 (penal fines that go to libraries) and Art I, Sec. 24 (crime victim rights assessment to cover those victim's rights named in that section). For the strict constructionists of constitutional law, §24 means what it clearly says, as follows:

Michigan Constitution, Art I, Sec. 24:

§ 24 Rights of crime victims; enforcement; assessment against convicted defendants.

Sec. 24. (1) Crime victims, as defined by law, shall have the following rights, as provided by law:

The right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process.

The right to timely disposition of the case following arrest of the accused.

The right to be reasonably protected from the accused throughout the criminal justice process.

The right to notification of court proceedings.

The right to attend trial and all other court proceedings the accused has the right to attend.

The right to confer with the prosecution.

The right to make a statement to the court at sentencing.

The right to restitution.

The right to information about the conviction, sentence, imprisonment, and release of the accused.

(2) The legislature may provide by law for the enforcement of this section.

(3) The legislature may provide for an assessment against convicted defendants to pay for crime victims' rights.

History: Add. H.J.R. P, approved Nov. 8, 1988, Eff. Dec. 24, 1988.

Which of those 9 listed crime victim's rights explicitly, implicitly, or remotely applies to the funding of a statewide trauma system? One does not need to be a lawyer to conclude that the answer is: **none** applies. Each of those "rights" applies to the criminal justice process and **not** to the providing of time-dependent systems of medical care to the general public. →

Amending a Constitution by Statute?

- Can legislation (federal) define "speech" in the First Amendment to exclude criticism of public officials?
- Can legislation (federal) define "arms" in the Second Amendment to exclude a rifle or pistol?
- Then why is it assumed that a bill can redefine and expand "crime victims' rights" beyond what the Michigan Constitution, Art I, Sec. 24, says those rights are – to fund a program clearly intended (Sec. 1904 above) for **ALL citizens** in need of emergency time-dependent treatment?

MCL 780.904, implementing Art I, Sec. 24, was intended to honor the command of Headlee that the Legislature (or state) provide funding for additional duties and services imposed upon local government. During the time I served on staff of HRPO, I covered the creation of 6 Headlee-related restricted funds, including the crime victim's rights fund. Every one of those has since either been compromised or been the subject of legislation introduced to do so. Will SB 138 be the **fifth** time CVRF is amended to divert and capture money contrary to why the fund exists?

In 2010 it was neither necessary nor warranted to impose the assessment for all crimes, yet the crime victim rights assessment was extended to all misdemeanors (like trespass, minor damage to property {no injury to a person}, or minor in possession of alcohol) simply to raise enough money – not for crime victim rights services but for the statewide trauma system referenced by MCL 780.904. There is now a manufactured surplus in the CVRF because (A) DCH hasn't done what it was supposed to do over the past 4 or so years and (B) the fund was artificially enhanced beyond what was needed for crime victim's rights services.

The latter point is another reason not to report out SB138. What has DCH done with all the CVRF money appropriated to it since 2010? SFA and HFA analyses do not answer that question; each is primarily concerned about off-setting the negative GF/GP supplemental with replacement funding from the CVRF. What does it plan to do with the \$3.5 million this year? Should you not know that before you commit another \$1.3 million? For those new to the budget game, once DCH and the statewide trauma system rely upon \$4.8 million from the CVRF this fiscal year and with the FY 2015-16 GF/GP under new downward pressures, are you certain that the "one-time" additional \$1.3 million will not become the new base moving forward?

If SB 138 is enacted, the old adage applies: "It's all about the money." Principal over principle.

Worthy cause – wrong solution!

Michigan is one of the few states without a statewide trauma system. No one is questioning the need or benefit of such a system. It would improve the medical response of anyone in immediate need of emergency time-dependent treatment. It should be a legitimate GF/GP expenditure. Its merit, however, does not justify use of the CVRF (surplus or no surplus).

Reasons why CVRF money should not be used as SB 138 would allow:

- o The Constitution authorizes an assessment to fund crime victim's rights, not just anything the Legislature finds it convenient to pay for. Expediency sets dangerous precedents. It suggests that if you cannot convince legislators to appropriate GF/GP money for your cause, use your influence and connections to find a restricted fund with a surplus – or indeed create a surplus (as here) – and disregard whatever purpose that fund was designed to serve or whatever limitations were placed on that fund when created.
- o Just because trauma centers are desperate for money does not mean the CVRF is the right pot. The end does not justify the means. Worthy cause – wrong solution.
- o As was feared in 2010, the deal is being broken to perpetuate use of CVRF money without substantiation of service to crime victims. Commitments made to advance legislation are quickly forgotten in the era of term limits. →

- A statewide trauma system benefits ALL citizens of the state and serves those who suffer serious injury by anyone whose car slides off road into a tree, who falls off a roof, who mangles a limb in an industrial accident, or who is injured playing sports. Moreover the boilerplate provision in 2014 PA 252 includes heart attack, stroke, and perinatal emergency services. **The purported service to crime victims is little more than a guise to access restricted revenue that was never intended for that purpose and to avoid the tough call to prioritize GF/GP funding.**
- **Without the money for the trauma system, the CVRF would not need the level of revenue** generated by doubling the assessment for felonies and imposing a \$75 CVR assessment on ALL misdemeanors (like trespass and MIP). The CVR assessments could be reduced to more reasonable levels and again exclude minor offenses.
- MCL 780.904 has a scale-back date, already extended by 4 years. Does anyone really expect that the money spigot will be turned off or reduced when 2018 comes? Do you have an antidote for the withdrawal of money from the medical lobby?
- We tend to look at bills with tunnel vision. Here is a larger context: In 1969 the only "extra" monetary penalty in criminal cases beyond fines and costs (all of which stayed local) was the \$3 judgment fee in district court. That evolved into "minimum costs" which have escalated to **\$68** for felonies and **\$50** for misdemeanors plus the CVR assessment of **\$130** or **\$75** respectively – amounting to **\$198** for felonies and **\$125** for misdemeanors. (For traffic civil infractions, once subject as misdemeanors to the same \$3 judgment fee, the state justice system assessment is now \$40.) If judges reduce local fines and costs in light of these "state" fees, the result is effectively **a diversion of local revenue for a state-dictated purpose that could otherwise fund local courts and law enforcement.** Another name for it? Reverse revenue sharing.
- We impose on defendants convicted for crimes a number of financial sanctions – costs, reimbursement for emergency response, supervision fees (probation and parole), tether monitoring fees, reimbursement for expense of incarceration (prison, jail, lock-ups), cost of extradition, and the original crime victim's rights assessment – each of which goes to a government agency to cover some aspect of the expense of the crime incurred by government. The exceptions are: penal fines as pure punishment (to libraries by Const, Art VIII, Sec. 9), restitution (to victims), and the much-criticized driver responsibility fees (to raise money, more punitive than covering expense to government). But except for restitution, even penal fines and DRF go to government. The portion of the crime victim's rights assessment that goes toward a statewide trauma system is an outlier among all financial sanctions against criminal defendants – destined to benefit specialized hospital emergency rooms unrelated to the crime or conduct.

A final observation: If the Legislature feels compelled to create and capture an artificial surplus in a restricted fund because it cannot figure out how to find \$3.5 million – and now \$4.8 million – in the GF/GP budget, how does one expect that Legislature to find \$1.2 billion for roads?

Respectfully,



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